



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 571

IN THE MATTER
OF
ALLIN P. THOMPSON

DISPOSITION AGREEMENT

The State Ethics Commission ("the Commission") and Allin P. Thompson ("Thompson") enter into this Disposition Agreement ("Agreement") pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On November 19, 1996, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Thompson. The Commission has concluded its inquiry and, on April 8, 1998, found reasonable cause to believe that Thompson violated G.L. c. 268A.

The Commission and Thompson now agree to the following findings of fact and conclusions of law:

1. Thompson was, during the time relevant, a member of the Harwich Board of Selectmen. As such, he was a municipal employee as that term is defined in G.L. c. 268A, §1.
2. In September 1992, Harwich resident Chester Ellis died, specifying in his will that the town of Harwich was to receive property he owned in West Harwich ("the Property") for use as a recreational park. As a member of the Board of Selectmen, Thompson was aware of this devise.
3. In January 1993, the executor discovered that Ellis had owned only a 75% interest in the Property at the time of his death, with Ellis' cousin owning the other 25%. Therefore, Ellis had devised to the town only his 75% interest, subject to the executor's right to sell the property under license with the probate court's permission. The executor so informed the Board of Selectmen.
4. The co-owner was unwilling to give his 25% interest to the town, and the town was unwillingly to buy out the co-owner's interest. Accordingly, the executor decided to sell the Property — with the probate court's permission — and divide the proceeds between the town and the co-owner. The town's proceeds would be used for recreational purposes, in accordance with the dictates of Ellis' will.^{1/} The executor informed the Board of Selectmen of his plan.
5. In January 1995, the probate court issued licenses to sell the Property and other parcels within Ellis' estate. To increase the Property's market value, the executor arranged with his real estate broker to market the Property in combination with an adjacent parcel in which Ellis had

also owned only a 75% interest. The asking price for the combined parcels was \$152,800, which represented the combined inventory values approved by the probate court.

6. In August 1995, after the combined parcels had been on the market for six or seven months, Thompson's sister and brother-in-law told Thompson that they wanted to buy the Ellis property and asked Thompson to represent them as their broker in the transaction. Thompson, who had a broker's license, agreed.

7. In August 1995, Thompson contacted the executor and his real estate broker to inform them of his sister and brother-in-law's interest in buying the property. There were no other interested buyers at that time.

8. Thompson participated in the initial negotiations of the sale price on behalf of his sister and brother-in-law. Eventually, the parties (without Thompson) agreed upon a purchase price of \$162,800, divided as follows: \$99,050 for the Property and \$63,750 for the adjacent parcel. The \$162,800 figure was \$10,000 above the minimum sale price approved by the probate court. The parties signed the purchase and sale agreement on August 18, 1995.

9. In addition to participating in the initial negotiations, Thompson also participated by filling out the purchase and sale agreement and delivering the deposit check.

10. At or around the time of the closing in late November 1995, the town administrator warned Thompson that he might have a conflict of interest in acting as a private broker on this matter and should confer with town counsel.^{2/} Thompson failed to do so.

11. Thompson did not attend the closing on November 29, 1995.

12. As the property was zoned for commercial use, the broker's commission on the transaction was 10% of the total sale price, or \$16,280. Thompson and the executor's broker split the commission, each receiving \$8,140. About \$4,500 of each broker's commission was attributable to the sale of the Property alone.

13. On or about December 12, 1995, the town received and accepted its share of the proceeds from the sale of the Property (\$62,912) to be used for recreational purposes.

14. Section 17(a) of G.L. c. 268A prohibits a municipal employee from directly or indirectly receiving compensation from anyone other than the municipality in relation to a particular matter^{3/} in which the municipality is a party or has a direct and substantial interest.

15. Section 17(c) of G.L. c. 268A prohibits a municipal employee from acting as agent for anyone other than the municipality in connection with a particular matter in which the municipality is a party or has a direct and substantial interest.

16. The probate court proceeding authorizing the sale of the Property pursuant to license was a particular matter.

17. As a beneficiary under Ellis' will, the town was a party to that particular matter. More specifically, the town had a direct and substantial interest in how much money it would receive as a result of the transaction.

18. Thompson represented his sister and brother-in-law in their purchase of the Property and adjacent parcel. Specifically, he acted as broker in negotiating the sale price, delivering the deposit check and filling out the purchase and sale agreement. Thus, he acted as agent for someone other than the town in connection with a particular matter in which the town was a party and/or had a direct and substantial interest. By doing so, Thompson violated §17(c).

19. Thompson received \$8,140 (\$4,500 from the sale of the Property) for representing his sister and brother-in-law in their purchase of the Property and adjacent parcel. Thus, he received compensation from someone other than the town in relation to a particular matter in which the town was a party and/or had a direct and substantial interest. By doing so, Thompson violated §17(a).

In view of the foregoing violations of G.L. c. 268A by Thompson, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Thompson:

- (1) that Thompson pay to the Commission the sum of one thousand dollars (\$1,000.00) as a civil penalty for violating G.L. c. 268A, §17(a) and (c); and
- (2) that Thompson waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: June 24, 1998

1/ General Laws c. 202, §19 provides that the probate court may, upon petition of the executor and with the consent of all interested parties, license the executor to sell real estate belonging to the estate, in such manner as the court orders. The net proceeds of such sale shall be paid over to those persons who would have been entitled to the real estate had it not been sold.

2/ Thompson denies that he received a warning from the Town Administrator at that time.

3/ "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).